

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 MICHAEL RIZZO, :
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 Plaintiff, : 23-CV-07190 (JAV)
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 -v- : ORDER
 CITY OF NEW YORK, :
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 Defendant. :
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JEANNETTE A. VARGAS, United States District Judge:

On May 5, 2025, the Court ordered Defendant to produce a document *ex parte*, in connection with Plaintiff's motion to compel discovery (ECF No. 58), over which Defendant had preliminarily asserted the deliberative process privilege, so that the Court could conduct an *in camera* review to determine whether the Plaintiff's need for the document would likely outweigh any potential assertion of privilege. ECF No. 68. Defendant's counsel produced the document to the Court via email on May 14, 2025.

The document in question is a spreadsheet of the reviewer who received Plaintiff's request for accommodation to the COVID-19 vaccine mandate, tracking each employee's accommodation request that he personally reviewed (DEF742-744). The spreadsheet contains the names, employee ID numbers, emails, and phone numbers of employees who made accommodation requests. Defendant withheld this personally identifying information of non-party employees as irrelevant. Defendant also withheld the column of the spreadsheet reflecting the reviewer's preliminary thoughts regarding the disposition of the requests pursuant to the deliberative process privilege.

After reviewing the *ex parte* submission, the Court HEREBY ORDERS Defendant to produce a redacted version of the spreadsheet, producing the columns labeled Last Name, First Name, Type of Request, Acknowledgment, Reviewer, Final Determination, and Date Decision Sent. The personally identifying information of non-parties, including their phone numbers, email addresses, and employee ID numbers, has no bearing on any issue in this case.

With respect to the column labeled Proposed Outcome, the Court does not reach the issue of whether it is protected by the deliberative process privilege. Having examined the document *in camera*, the Court has determined that the information in this column lacks any relevance to the parties' claims and defenses. It is the final disposition of such requests that is of potential relevance, not a preliminary proposal.

Plaintiff also moved to compel two emails withheld on the basis of the attorney-client privilege and the work product doctrine. ECF No. 58. The record before the Court is currently

insufficient to make a determination as to whether the documents in question, which were provided to reviewers to apply in making decisions regarding accommodation requests, constitute the agency's "working law" on this topic, such that any claim of privilege has been waived. *See, e.g., New York Times Co. v. United States Dep't of Justice*, 939 F.3d 479, 490-91 (2d Cir. 2019). The Court therefore ORDERS Defendant to submit by **June 4, 2025**, a letter brief addressing this issue, along with any accompanying declarations it wishes to submit in support of its assertion of privilege. Plaintiff shall submit any responsive papers by **June 9, 2025**.

In light of the Court's decision on the motion to compel, the Court grants defense counsel's request for an adjournment of the pre-trial conference from May 29, 2025, to July 14, 2025. ECF No. 71. The parties shall appear for a pre-trial conference on **July 21, 2025**, at 10:30 AM. The conference will be held in Courtroom 14C, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007.

The Clerk of the Court is respectfully ordered to terminate ECF Nos. 62, 63, and 71.

SO ORDERED.

Dated: May 28, 2025
New York, New York



JEANNETTE A. VARGAS
United States District Judge